

290.01 INCOME AND EXCISE TAXES

INHERITANCE, GIFT, INCOME, EXCISE TAXES

CHAPTER 290. INCOME AND EXCISE TAXES

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290.01 Definitions

[For text of subds. 1 to 19, see M.S.1971]

Subd. 20. Gross Income. Except as otherwise provided in this chapter, the term "gross income," as applied to corporations includes every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealing in, property; income derived from the transaction of any trade or business; and income derived from any source.

For each of the taxable years beginning after December 31, 1960 and prior to January 1, 1971, the term "gross income" in its application to individuals, estates, and trusts, shall mean the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through December 31, 1970 for the applicable taxable year, with the modifications specified in this section.

For each of the taxable years beginning after December 31, 1970, the term "gross income" in its application to individuals, estates, and trusts shall mean the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this section.

(i) The Internal Revenue Code of 1954, as amended through December 31, 1970, shall be in effect for taxable years beginning after December 31, 1970 and prior to January 1, 1973.

(ii) The Internal Revenue Code of 1954, as amended through December 31, 1972, shall be in effect for taxable years beginning after December 31, 1972.

References to the Internal Revenue Code of 1954 in clauses (a), (b) and (c) following shall mean the code in effect for the purpose of defining gross income for the applicable taxable year.

(a) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than Minnesota or a political subdivision of any such other state exempt from federal income taxes under the Internal Revenue Code of 1954;

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(2) Interest income on obligations of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax, but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

(4) Interest on indebtedness incurred or continued to purchase or carry securities the income from which is exempt from tax under chapter 290, to the extent deductible in determining federal adjusted gross income;

(5) Amounts received as reimbursement for an expense of sickness or injury which was deducted in a prior taxable year to the extent that the deduction for such reimbursed expenditure resulted in a tax benefit;

(6) Losses which do not arise from events or transactions which are assignable to Minnesota under the provisions of sections 290.17 to 290.20, including any capital loss or net operating loss carryforwards or carrybacks resulting from such losses, and including any such nonassignable losses which occur prior to the time the individual becomes a resident of the state of Minnesota;

(7) The amount of any federal income tax overpayment for any previous taxable year, received as refund or credited to another taxable year's income tax liability, proportionate to the percentage of federal income tax that was claimed as a deduction in determining Minnesota income tax for such previous taxable year.

The overpayment refund or credit, determined with respect to a husband and wife on a joint federal income tax return for a previous taxable year, shall be reported on joint or separate Minnesota income tax returns. In the case of separate Minnesota returns, the overpayment shall be reported by each spouse proportionately according to the relative amounts of federal income tax claimed as a deduction on his or her separate Minnesota income tax return for such previous taxable year;

(8) In the case of a move from Minnesota to another state or nation, the amount of moving expenses which exceed total reimbursements and which were therefore deducted in arriving at federal adjusted gross income; and

(9) In the case of property disposed of on or after January 1, 1973, the amount of any increase in the taxpayer's federal tax liability under section 47 of the Internal Revenue Code of 1954, as amended through December 31, 1972, to the extent of the credit under section 38 of the Internal Revenue Code of 1954, as amended through December 31, 1972, that was previously allowed as a deduction either under section 290.01, subdivision 20(b)(9) or under section 290.09, subdivision 24; and

(10) Expenses and losses arising from a farm which are not allowable under section 290.09, subdivision 29.

(b) Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income tax under the laws of the United States;

(2) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for Minnesota income tax purposes than for federal income tax purposes, that does not exceed such difference in basis; but if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty per centum of such portion of the gain;

(3) Interest or dividend income on securities to the extent exempt from income tax under the laws of this state authorizing the issuance of such securities but includible in gross income for federal income tax purposes;

(4) Income which does not arise from events or transactions which are assignable to Minnesota under the provisions of sections 290.17 to 290.20;

(5) Losses, not otherwise reducing federal adjusted gross income assignable to Minnesota, arising from events or transactions which are assignable to

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Minnesota under the provisions of sections 290.17 to 290.20, including any capital loss or net operating loss carryforwards or carrybacks resulting from such losses;

(6) If included in federal adjusted gross income, the amount of any overpayment of income tax to Minnesota, or any other state, for any previous taxable year, whether such amount is received as a refund or credited to another taxable year's income tax liability;

(7) The amount of any pension or benefit received from the United States or from the state of Minnesota, or any of its subdivisions, which is excluded from gross income under the provisions of section 290.08, subdivision 6; and

(8) The amount of compensation for personal services in the armed forces of the United States or the United Nations which is excluded from gross income under the provisions of section 290.65; and

(9) In the case of property acquired on or after January 1, 1973, the amount of any credit to the taxpayer's federal tax liability under section 38 of the Internal Revenue Code of 1954, as amended through December 31, 1972.

(c) Modifications affecting shareholders of electing small business corporations under section 1372 of the Internal Revenue Code of 1954, or section 290.972 of this chapter.

(1) Shareholders in a small business corporation, which has elected to be so taxed under the Internal Revenue Code of 1954, but has not made an election under section 290.972 of this chapter, shall deduct from federal adjusted gross income the amount of any imputed income from such corporation and shall add to federal adjusted gross income the amount of any loss claimed as a result of such stock ownership. Also there shall be added to federal adjusted gross income the amount of any distributions in cash or property made by said corporation to its shareholders during the taxable year.

(2) In cases where the small business corporation has made an election under section 1372 of the Internal Revenue Code of 1954, but has not elected under section 290.972 of this chapter and said corporation is liquidated or the individual shareholder disposes of his stock and there is no capital loss reflected in federal adjusted gross income because of the fact that corporate losses have exhausted the shareholders basis for federal purposes, such shareholders shall be entitled, nevertheless, to a capital loss commensurate to their Minnesota basis for the stock.

(3) In cases where the election under section 1372 of the Internal Revenue Code of 1954 antedates the election under section 290.972 of this chapter and at the close of the taxable year immediately preceding the effective election under section 290.972 the corporation has a reserve of undistributed taxable income previously taxed to shareholders under the provisions of the Internal Revenue Code of 1954, in the event and to the extent that such reserve is distributed to shareholders such distribution shall be taxed as a dividend for purposes of this act.

Items of gross income includible within these definitions shall be deemed such regardless of the form in which received. Items of gross income shall be included in gross income of the taxable year in which received by a taxpayer unless properly to be accounted for as of a different taxable year under methods of accounting permitted by section 290.07, except that (1) amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, to the extent that such amounts were accumulated through deductions from gross income or entered into the computation of taxable net income during any taxable year, be treated as gross income for the year in which the transfer occurs, but only to the extent that such amounts resulted in a reduction of the tax imposed by this act, and (2) amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received, but only to the extent that such amounts resulted in a reduction of the tax

imposed by this act. If a husband and wife have filed a joint federal income tax return and separate Minnesota income tax returns for the same taxable period, amounts received as refunds on account of federal income taxes paid shall be included in gross income in the same ratio as the deductions for federal income taxes were claimed in the separate Minnesota tax returns.

(d) Modification in computing taxable income of the estate of a decedent. Amounts allowable under section 291.07, subdivision 1(2) in computing Minnesota inheritance tax liability shall not be allowed as a deduction in computing the taxable income of the estate unless there is filed within the time and in the manner and form prescribed by the commissioner a statement that the amounts have not been allowed as a deduction under section 291.07 and a waiver of the right to have such amounts allowed at any time as deductions under section 291.07. The provisions of this paragraph shall not apply with respect to deductions allowed under section 290.077 (relating to income in respect of decedents). In the event that the election made for federal tax purposes under section 642(g) of the Internal Revenue Code of 1954 differs from the election made under this paragraph appropriate modification of the estate's federal taxable income shall be made to implement the election made under this paragraph in accordance with regulations prescribed by the commissioner.

[1973 c 711 s 1; 1973 c 737 s 1]

(NOTE: The provisions of Laws 1973, Chapter 737 shall be applicable to taxable years beginning on or after January 1, 1974.)

[For text of subds. 21 to 23, see M.S.1971]

Subd. 24. Certain unit investment trusts. (a) A unit investment trust (as defined in the Investment Company Act of 1940)

(1) which is registered under such act and issues periodic payment plan certificates, as defined in such act, in one or more series,

(2) substantially all of the assets of which, as to all such series, consist of (i) securities issued by a single management company, as defined in such act and securities acquired pursuant to clause (a)(3), or (ii) securities issued by a single other corporation, and

(3) which has no power to invest in any other securities except securities issued by a single other management company, when permitted by such act or the rules and regulations of the securities and exchange commission, shall not be treated as a person, corporation, partnership, trust or investment company.

(b) In the case of a unit investment trust described in clause (a)

(1) each holder of an interest in such trust shall, to the extent of such interest, be treated as owning a proportionate share of the assets of such trust,

(2) the basis of the assets of such trust which are treated under clause (b)(1) as being owned by a holder of an interest in such trust shall be the same as the basis of his interest in such trust, and

(3) in determining the period for which the holder of an interest in such trust has held the assets of the trust which are treated under clause (b)(1) as being owned by him, there shall be included the period for which such holder has held his interest in such trust.

This subdivision shall not apply in the case of a unit investment trust which is a segregated asset account under the insurance laws or regulations of a state.

[1973 c 232 s 1]

(NOTE: This subdivision is in effect for all taxable years of unit investment trusts ending after December 31, 1972.)

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290.031 Employers excise tax

Subdivision 1. For purposes of this section, the provisions of chapter 268, are incorporated by reference herein, insofar as such provisions are applicable to the excise tax imposed by this section.

Subd. 2. Unless the language or context indicates that a different meaning is intended, the followings words, terms and phrases, for purposes of Laws 1973, Chapter 650, Article 25, sections 4 and 5, shall have the meanings given to them.

Subd. 3. Employer. The term "employer" means any employer except a person which is exempt under section 290.05, subdivision 1(h), (i), (l) and (m) or those employers which are subject to the provisions of sections 294.21 to 294.28 or chapter 295, other than sections 295.32 to 295.43.

Subd. 4. Taxable compensation. "Taxable compensation" means the total wages, as defined in section 268.04, subdivision 25, but not limited as provided in clause (1) of said subdivision, paid by an employer, as defined in subdivision 3, to employees after June 30, 1973, excluding therefrom the first \$100,000 of compensation paid during an employer's fiscal or calendar taxable year. There shall be deducted in determining taxable compensation for any taxable year the sum of \$100,000 except that where the taxable year is a period of less than 12 months and in the case of taxable years ending on or before May 31, 1974 the deduction shall be proportionately reduced.

Subd. 5. Taxable net income. "Taxable net income" means the taxable net income as defined by sections 290.18 and 290.19 for the taxable year, without any allowances for (1) federal, state or foreign nation income taxes accrued or paid, (2) deductions for long term capital gains, (3) net operating loss deductions, and (4) non-business deductions.

Subd. 6. Imposition of tax. (a) Except as provided in (b) an excise tax of two mills per dollar on the taxable compensation paid by an employer is hereby imposed on such employer.

(b) In the event that an employer other than an employer exempt under the provisions of section 290.05, has taxable net income for the taxable year of \$0 or less, the excise tax imposed by (a) shall be one mill instead of two mills. It is specifically provided that an employer taxable under sections 290.031, 290.921, and 290.922 but not taxable under section 290.05 shall be required to pay two mills on each dollar of taxable compensation.

[1973 c 650 art XXVI s 1]

290.06 Rates of tax; credits against tax

Subdivision 1. Computation, corporations. The privilege and income taxes imposed by this chapter upon corporations shall be computed by applying to their taxable net income in excess of the applicable credits allowed under section 290.21 the rate of 12 percent. The amount of tax payable by a corporation required to file a return shall not be less than \$100.

[1973 c 650 art XXII s 1]

(NOTE: The provisions of this section shall be effective for taxable years beginning after December 31, 1972.)

[For text of subds. 2 to 8, see M.S.1971]

Subd. 9. Pollution control equipment, credit. (a) A credit of five percent of the net cost of equipment included in section 290.09, subdivision 7, paragraph (A)(a) that is installed and operated within Minnesota exclusively to prevent pollution of air, water, or land in accordance with engineering principles approved by the Minnesota pollution control agency, may be deducted

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from the tax due under chapter 290 in the first year for which a depreciation deduction is allowed for the equipment. The credit allowed by this subdivision shall not exceed so much of the liability for tax for the taxable year as does not exceed \$50,000.

(b) If the amount of the credit determined under (a) for any taxable year for which a depreciation deduction is allowed exceeds the limitation provided by (a) for such taxable year (hereinafter in this subdivision referred to as the "unused credit year"), such excess shall be,

(1) a credit carryback to each of the three taxable years preceding the unused credit year, and

(2) a credit carryover to each of the seven taxable years following the unused credit year.

The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the ten taxable years to which (by reason of (1) and (2)) such credit may be carried and then to each of the other nine taxable years; provided, however, the maximum credit allowable in any one taxable year under this subdivision (including the credit allowable under (a) and the carryback or carryforward allowable under this paragraph) shall in no event exceed \$50,000.

(c) This subdivision shall apply to property acquired in taxable years beginning on or after January 1, 1969.

[1973 c 22 s 1]

[For text of subds. 9a and 10, see M.S.1971]

290.0601 Definitions

[For text of subds. 1 to 5, see M.S.1971]

Subd. 6. Claimant. Claimant means a person who has filed a claim under sections 290.0601 to 290.0616 and 290.0618, has attained either the age of 65 or was a recipient of "supplementary security income for the aged, blind, and disabled" provided under the social security amendments of 1972 (P.L. 92-603) during the calendar year for which the claim is filed, and was domiciled in this state during the entire calendar year for which the claim for relief under sections 290.0601 to 290.0616 and 290.0618, was filed. In the case of claim for rent constituting property taxes accrued the claimant shall have rented property during any part of the calendar year for which he files claim for relief under sections 290.0601 to 290.0616 and 290.0618. When two individuals are able to meet the qualifications for a claimant and are husband and wife, they may determine between them as to which of the two the claimant shall be. If they are unable to agree the matter shall be referred to the commissioner of taxation and his decision shall be final. When a homestead is occupied by two or more individuals and more than one such individual is able to qualify as a claimant, and some or all such qualified individuals are not related as determined under subdivision 3, each such individual may be a claimant, provided he meets the requirements therefor. Each such claimant shall use only the rent constituting property taxes or property taxes accrued paid by him.

(NOTE: This subdivision is effective January 1, 1974, and shall apply to property taxes and rent constituting property taxes accrued in 1973 and subsequent years.)

[1973 c 650 art XVIII s 1]

[For text of subds. 7 and 8, see M.S.1971]

Subd. 9. Property taxes accrued. Property taxes accrued means the net property tax after deducting the credit allowed by Minnesota Statutes 1967,

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Section 273.13, Subdivisions 6 and 7, (exclusive of special assessments, delinquent interest and charges for service) levied on a claimant's homestead in 1967 or any calendar year thereafter pursuant to Minnesota Statutes 1965, Chapters 272 and 273. When a homestead is owned by two or more persons or entities as joint tenants or tenants in common and one or more persons or entities is not a member of claimant's household, "property taxes accrued" is that part of property taxes levied on such homestead as reflects the ownership percentage of the claimant and his household. For purposes of this paragraph property taxes are "levied" when the tax roll is delivered to the local treasurer for collection. The local treasurer will include with the tax bill a statement that if the owner of the property is 65 years of age or over, or was a recipient of "supplementary security income for the aged, blind, and disabled" under the social security amendments of 1972 (P.L. 92-603), he may be eligible for the credit allowed by sections 290.0601 to 290.0616 and 290.0618. When a claimant and his household own their homestead part of the preceding calendar year and rent the same or a different homestead for part of the same year "property taxes accrued" means only taxes levied on the homestead when both owned and occupied as such by claimant and his household at the time of the levy, multiplied by the percentage of 12 months that such property was owned and occupied by such household as its homestead during the preceding year. When a household owns and occupies two or more different homesteads in the same calendar year, property taxes accrued shall relate only to that property occupied by the household as a homestead on the levy date. Whenever a homestead is an integral part of a farm, the claimant may use the total property taxes accrued for the larger unit, but not exceeding 80 acres of land, as described in section 273.13, subdivision 6, except as the limitations of section 290.0608 apply. For the purpose of sections 290.0601 to 290.0616 and 290.0618, the "unit" refers to that parcel of property covered by a single tax statement of which the homestead is a part.

[1973 c 650 art XVIII s 2]

(NOTE: This subdivision is effective January 1, 1974, and shall apply to property taxes and rent constituting

property taxes accrued in 1973 and subsequent years.)

290.0604 Filing time limit, late filing

Any claim for property taxes accrued shall be filed with the department of taxation on or before June 30 of the year in which such property taxes are due and payable. Any claim for rent constituting property taxes accrued shall be filed on or before June 30 of the year following the year in which such rent was paid. The commissioner may extend the time for filing these claims, as provided in section 290.0615.

A claim filed after the original or extended due date shall be allowed, however the amount of credit shall be reduced by five percent of the amount otherwise allowable, plus an additional five percent for each month of delinquency, not exceeding a total reduction of 25 percent. In any event no claim shall be allowed if the claim is not filed on or before two years after the original or extended due date for the filing of the claim.

[1973 c 650 art XVI s 2]

(NOTE: This section is effective for all claims filed on or after January 1, 1974 based on property taxes due and payable in 1974 and thereafter for each

succeeding year, and for rent constituting property taxes accrued for 1973 and thereafter for each succeeding year.)

290.0607 [Repealed, 1973 c 650 art XVI s 4]

290.061 Proof of claim

Every claimant under sections 290.0601 to 290.0616 and 290.0618, shall supply to the department of taxation, in support of his claim, reasonable proof of age, proof of "supplementary security income for the aged, blind, and disabled" received, rent paid, name and address of owner or manag-

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ing agent of property rented, property taxes accrued, changes of homestead, household membership, household income, size and nature of property claimed as the homestead and a statement that the property taxes accrued, used for purposes of sections 290.0601 to 290.0616 and 290.0618, have been or will be paid by him and that there are no delinquent property taxes on the homestead.

[1973 c 650 art XVIII s 3]

(NOTE: This section is effective January 1, 1974, and shall apply to property taxes and rent constituting property taxes accrued in 1973 and subsequent years.)

290.0617 [Repealed, 1973 c 650 art XVI s 4]

290.0618 Limits

The amount of any claim pursuant to sections 290.0601 to 290.0616 and 290.0618, shall be determined in accordance with the following schedule:

Property Tax		Total Household Income				
At Least:		0	1,500	2,000	2,500	3,000
But Less Than:		1,499	1,999	2,499	2,999	3,499
At Least	But Less Than	Your Senior Citizens Tax Credit Is:				
0	25	\$ 22	\$ 21	\$ 19	\$ 16	\$ 12
25	50	45	42	38	32	25
50	75	68	64	56	49	38
75	100	90	85	75	65	50
100	125	112	106	94	81	62
125	150	135	128	112	98	75
150	175	158	149	131	114	88
175	200	180	170	150	130	100
200	225	202	191	169	146	112
225	250	225	212	188	162	125
250	275	248	234	206	179	138
275	300	270	255	225	195	150
300	325	292	276	244	211	162
325	350	315	298	262	228	175
350	375	338	319	281	244	188
375	400	360	340	300	260	200
400	425	382	361	319	276	212
425	450	405	382	338	292	225
450	475	428	404	356	309	238
475	500	450	425	375	325	250
500	525	472	446	394	341	262
525	550	495	468	412	358	275
550	575	518	489	431	374	288
575	600	540	510	450	390	300
600	625	562	531	469	406	312
625	650	585	552	488	422	325
650	675	608	574	506	439	338
675	700	630	595	525	455	350
700	725	652	616	544	471	362
725	750	675	638	562	488	375
750	775	698	659	581	504	388
775	800	720	680	600	520	400

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Property Tax	Total Household Income				
	At Least:				
	3,500	4,000	4,500	5,000	5,500
	But Less Than:				
	3,999	4,499	4,999	5,499	5,999

At Least	But Less Than	Your Senior Citizens Tax Credit Is:				
0	25	\$ 9	\$ 5	\$ 4	\$ 2	\$ 1
25	50	18	10	8	5	2
50	75	26	15	11	8	4
75	100	35	20	15	10	5
100	125	44	25	19	12	6
125	150	52	30	22	15	8
150	175	61	35	26	18	9
175	200	70	40	30	20	10
200	225	79	45	34	22	11
225	250	88	50	38	25	12
250	275	96	55	41	28	14
275	300	105	60	45	30	15
300	325	114	65	49	32	16
325	350	122	70	52	35	18
350	375	131	75	56	38	19
375	400	140	80	60	40	20
400	425	149	85	64	42	21
425	450	158	90	68	45	22
450	475	166	95	71	48	24
475	500	175	100	75	50	25
500	525	184	105	79	52	26
525	550	192	110	82	55	28
550	575	201	115	86	58	29
575	600	210	120	90	60	30
600	625	219	125	94	62	31
625	650	228	130	98	65	32
650	675	236	135	101	68	34
675	700	245	140	105	70	35
700	725	254	145	109	72	36
725	750	262	150	112	75	38
750	775	271	155	116	78	39
775	800	280	160	120	80	40

In no event shall the claim allowed pursuant to the above schedule exceed the amount of property tax accrued.

[1973 c 650 art XVI s 1]

(NOTE: This section is effective for all claims filed on or after January 1, 1974 based on property taxes due and payable in 1974 and thereafter for each succeeding year, and for rent constituting property taxes accrued for 1973 and thereafter for each succeeding year.)

290.066 Special property tax credit

Subdivision 1. A person entitled to an amount equal to the qualified property tax credit allowed by section 273.012 shall file a claim with the department of taxation on or before June 30. The department of taxation shall make available suitable forms with instructions for the claimant, including a form which may be included with or as a part of the individual income tax blank. The claim shall be in such form as the commissioner may prescribe.

Subd. 2. Such claim shall be subject to the provisions of sections 290.0604, 290.0605, 290.061, 290.0611, 290.0612, 290.0614, and 290.0615, where applicable.

Subd. 3. In the event that a "qualified home owner," in addition to the credit provided in this section, is entitled to a credit under section 290.0618,

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he shall not include the amount of taxes refunded under this section in the amount of property tax on which the credit allowed by section 290.0618, is calculated.

Subd. 4. There is hereby appropriated from the general fund the necessary amounts to pay the claims allowed by this section.

[1973 c 650 art XV s 3]

(NOTE: This section is effective for all "base taxes" due and payable after December 31, 1972, and is effective for all "current taxes" due and payable after December 31, 1973.)

290.08 Exemptions from gross income

[For text of subds. 1 to 5, see M.S.1971]

Subd. 6. **Pensions, benefits, and allowances from state and United States.** Amounts, including interest, received by any person from the United States or from the state of Minnesota or any of its political or governmental subdivisions or from any other state or its political or governmental subdivisions, either as a refund of contributions to, or by way of payment as a pension, public employee retirement benefit, unemployment compensation benefit, social security benefit or railroad retirement or unemployment compensation benefit, family allotment or other similar allowance;

[1973 c 459 s 1]

[For text of subds. 7 to 22, see M.S.1971]

(NOTE: The provisions of this subdivision shall be applicable to taxable years beginning after December 31, 1972.)

290.081 Income of nonresidents, reciprocity

(a) The compensation received for the performance of personal or professional services within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state, shall be excluded from gross income to the extent such compensation is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed therein, or

(b) Whenever a nonresident taxpayer has become liable for income taxes to the state where he resides upon his net income for the taxable year derived from the performance of personal or professional services within this state and subject to taxation under chapter 290, there shall be allowed as a credit against the amount of income tax payable by him under this chapter, such proportion of the tax so paid by him to the state where he resides as his gross income subject to taxation under this chapter bears to his entire gross income upon which the tax so paid to such other state was imposed; provided, that such credit shall be allowed only if the laws of such state grant a substantially similar credit to residents of this state subject to income tax under such laws, or

(c) If any taxpayer who is a resident of this state, or a domestic corporation or corporation commercially domiciled therein, has become liable for taxes on or measured by net income to another state upon income derived from the performance of personal or professional services within such other state and subject to taxation under this chapter he or it shall be entitled to a credit against the amount of taxes payable under this chapter, of such proportion thereof, as such gross income subject to taxation in such state bears to his entire gross income subject to taxation under this chapter; provided (1) that such credit shall in no event exceed the amount of tax so paid to such other state on the gross income earned within such other state and subject to taxation under this chapter, and (2) that such credit shall not be allowed if such other state allows residents of this state a credit against the taxes imposed by such state for taxes payable under this chapter substantially similar to

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the credit provided for by paragraph (b) of this section, and (3) the allowance of such credit shall not operate to reduce the taxes payable under this chapter to an amount less than would have been payable if the gross income earned in such other state had been excluded in computing net income under this chapter.

(d) The commissioner shall by regulation determine with respect to gross income earned in any other state the applicable clause of this section. When it is deemed to be in the best interests of the people of this state, the commissioner may determine that the provisions of clause (a) shall not apply.

(e) "Tax So Paid" as used in this section means taxes on or measured by net income payable to another state on income earned within the taxable year for which the credit is claimed, provided that such tax is actually paid in that taxable year, or subsequent taxable years.

(f) For the purposes of clause (a), whenever the Wisconsin tax on Minnesota residents which would have been paid Wisconsin without clause (a) exceeds the Minnesota tax on Wisconsin residents which would have been paid Minnesota without clause (a), or vice versa, then the state with the net revenue loss resulting from clause (a) shall receive from the other state the amount of such loss. This provision shall be effective for all years beginning after December 31, 1972. The data used for computing the loss to either state shall be determined on or before September 30 of the year following the close of the previous calendar year.

If an agreement cannot be reached as to the amount of the loss, the commissioner of taxation and the taxing official of the state of Wisconsin shall each appoint a member of a board of arbitration and these members shall appoint the third member of the board. The board shall select one of its members as chairman. Such board may administer oaths, take testimony, subpoena witnesses, and require their attendance, require the production of books, papers and documents, and hold hearings at such places as are deemed necessary. The board shall then make a determination as to the amount to be paid the other state which determination shall be final and conclusive.

[1973 c 650 art VI s 1]

290.086 Nonpublic school education costs, credit

[For text of subds. 1 to 5, see M.S.1971]

Subd. 6. If the allowable amount of the claim authorized as a tax credit in subdivision 5 exceeds the state income taxes otherwise due on the claimant's income in any year or if there are no state income taxes due on the claimant's income in any year, the amount of the claim not used as an offset against income taxes, subject to audit by the department of taxation, shall be paid to the claimant in the same manner as a refund for overpayment of a tax. Interest shall be allowed as provided in section 290.92, subdivision 13.

[1973 c 44 s 1]

(NOTE: This subdivision is in effect for the taxable years beginning after December 31, 1972.)

[For text of subd. 7, see M.S.1971]

Subd. 8. Such tax credit claim may be filed only by the parent or legal guardian who made the payment or presents the proof of payment thereof and only one claim may be filed for any student per taxable year. In the event more than one parent pays a student's education costs in a given taxable year the parent paying the greatest amount, or presenting proof of payment thereof, and such parent or legal guardian must have been a resident of Minnesota during the period for which the claim is made, shall have the right to file the tax credit claim based only upon the amount he has paid or presents proof of payment for.

[1973 c 210 s 1]

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290.09 Deductions from gross income

[For text of subds. 1 to 23, see M.S.1971]

Subd. 24. Additional investment credit deductions. (a) The basis of any property placed in service before January 1, 1964, which base was reduced in accordance with the provisions of Laws 1963, Chapter 236, shall as of the first day of the taxpayer's first taxable year which begins after December 31, 1963, be increased by an amount equal to the reduction permitted under the aforesaid chapter 236.

(b) In the case of property disposed of on or after January 1, 1973, there shall be added to the taxpayer's income, in the year in which the property is disposed of, the amount of any increase in the taxpayer's federal tax liability under section 47 of the Internal Revenue Code of 1954, as amended through December 31, 1972, to the extent of the credit under section 38 of the Internal Revenue Code of 1954, as amended through December 31, 1972 that was previously allowed as a deduction under this section.

[1973 c 711 s 2]

[For text of subds. 25 and 26, see M.S.1971]

Subd. 27. Adoption expenses. The expenses he has incurred during the taxable year arising from his adoption of one or more children, including attorney fees, court costs, social or adoption agency fees, and other necessary costs in connection with an adoption; such total expense, however, shall not exceed \$1,250 per child adopted. If under the taxpayer's system of accounting, the expense is deductible in two different taxable years, the total deduction for the two years shall not exceed \$1,250 per child.

[1973 c 446 s 1]

[For text of subd. 28, see M.S.1971]

Subd. 29. Deductions attributable to farming. (a) **Definition.** For purposes of Laws 1973, Chapter 737, income and gains and expenses and losses shall be considered as "arising from a farm" if such items are received or incurred in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, and all operations incident thereto, including but not limited to the common use of "hedging".

(b) **Deductions limited.** Except as provided in Laws 1973, Chapter 737, expenses and losses, except for interest and taxes, arising from a farm shall not be allowed as deductions in excess of income and gains arising from a farm.

(c) **Deductions allowed; carryover deductions.** Expenses and losses arising from a farm or farms shall be allowed as deductions up to the amount of the income and gains arising from a farm or farms in any taxable year, plus the amount of non-farm gross income, or taxable net income in the case of a corporation, not to exceed the amount of \$10,000 reduced by the amount by which such non-farm income exceeds the amount of \$10,000. Any remaining balance of such deductions shall be carried back three years and carried forward five years, in chronological order.

Current expenses and losses shall be utilized as deductions in any taxable year, to the extent herein allowable, prior to the application of any carryback or carryover deductions. In any event, the combined amounts of such current expenses and losses and carryback or carryover deductions shall be allowed as deductions up to the amount of the income and gains arising from a farm or farms in any taxable year, plus the amount of non-farm gross income, or taxable net income in the case of a corporation, not to exceed the amount of \$10,000 reduced by the amount by which such non-farm income exceeds the amount of \$10,000.

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(d) For purposes of Laws 1973, Chapter 737 individual shareholders of an electing small business corporation shall be considered separate entities.

[1973 c 737 s 2]

(NOTE: The provisions of this sub-division shall be applicable to taxable years beginning on or after January 1, 1974.)

290.095 Operating loss deduction

Subdivision 1. Allowance of deduction. (a) There shall be allowed as a deduction for the taxable year the amount of any net operating loss deduction as defined in subdivision 2, clause (b); provided, however, that the modifications specified in subdivision 4 shall be made in computing the taxable net income for the taxable year before the net operating loss deduction shall be allowed.

(b) A net operating loss deduction shall be available under this section only to corporate taxpayers except as provided in subdivisions 6, 7 and 9 hereof.

[1973 c 74 s 1]

Subd. 2. Defined and limited. (a) The term "net operating loss" as used in this section shall mean the excess of the deductions of the kind provided for in section 290.09, permitted to be taken in computing a taxpayer's taxable net income, as that term is defined in section 290.01, subdivision 22, over the gross income used in computing such taxable net income, with the modifications specified in subdivision 4.

(b) The term "net operating loss deduction" as used in this section means the aggregate of the net operating loss carrybacks and carryovers to the taxable year, computed in accordance with subdivision 3.

[1973 c 74 s 2]

Subd. 3. Carryover and carryback. (a) Except as provided in subdivision 8, a net operating loss for any taxable year commencing on or after January 1, 1957 shall be:

(1) A net operating loss carryback to each of the three taxable years preceding the taxable year of such loss, and

(2) A net operating loss carryover to each of the five taxable years following the taxable year of such loss; provided, however,

(3) That a net operating loss incurred in a taxable year commencing prior to December 31, 1956, shall be computed under section 290.095, but the net operating loss so determined shall be a carryover to each of the five taxable years following the taxable year of such loss, which year of loss shall not be prior to a taxable year ending in the year 1952. A net operating loss incurred in a taxable year commencing on or after January 1, 1956, may not be carried back to any taxable year commencing prior to December 31, 1956.

(b) The entire amount of the net operating loss for any taxable year shall be carried to the earliest of the taxable years to which, by reason of subdivision 3, clause (a), such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable net income, adjusted by the modifications specified in subdivision 4, for each of the prior taxable years to which such loss may be carried.

(c) Where a corporation does business both within and without Minnesota, and apportions its income under the provisions of section 290.19, the net operating loss deduction shall be allowed to the extent of the apportionment ratio of the loss year, or the year to which the loss is carried, whichever is smaller.

[1973 c 74 s 3]

Subd. 4. Computation and modifications. The following modifications shall be made in computing a net operating loss in any taxable year and also in computing the taxable net income for any taxable year before a net operating loss deduction shall be allowed:

(a) Deductions otherwise allowable in computing taxable net income, but which are not attributable to the operation of a trade or business regularly carried on by the taxpayer, shall be allowed only to the extent of the amount of the gross income, not derived from such trade or business, included in computing such taxpayer's taxable net income.

(b) There shall be included in computing the gross income used in computing taxable net income the amount of the interest, excludable from gross income under section 290.08, that would be treated as assignable to this state, decreased by the amount of interest paid or accrued to purchase or carry the investments earning such interest to the extent that such interest would not have been deductible in computing the taxpayer's taxable net income.

(c) No deduction shall be allowed for or with respect to losses connected with income producing activities if the income therefrom would not be required to be either assignable to this state or included in computing the taxpayer's taxable net income.

(d) A net operating loss deduction shall not be allowed.

(e) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets. The deduction for long-term capital gains provided by section 290.16, subdivision 4, shall not be allowed.

(f) Renegotiation of profits for a prior taxable year under the renegotiation laws of the United States of America, including renegotiation of the profits with a subcontractor, shall not enter into the computation.

(g) Federal income and excess profits taxes shall not be allowed as a deduction.

[1973 c 74 s 4]

[For text of subds. 6 to 9, see M.S.1971]

290.10 Nondeductible items

In computing the net income no deduction shall in any case be allowed for:

- (1) Personal, living or family expenses;
- (2) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, except as otherwise provided in this chapter;
- (3) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
- (4) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;
- (5) The shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance;
- (6) Losses from sales or exchanges of property, directly or indirectly, between members of a family, or, except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 percent in value of the outstanding stock; or between any person or corporation and a trust created by him or it or of which he or it is a beneficiary, directly or indirectly; for the purpose of this clause, an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestor, and lineal descendants, but such losses shall be allowed as deductions if the taxpayer shows to the satisfaction of the commissioner that the sale or exchange was bona fide and for a fair and adequate consideration;

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(7) In computing net income, no deduction shall be allowed under section 290.09, subdivision 2, relating to expenses incurred or under section 290.09, subdivision 3, relating to interest accrued;

(a) If such expenses or interest not paid within the taxable year or within two and one-half months after the close thereof; and

(b) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(c) If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under clause (6);

(8) Contributions by employees under the federal railroad retirement act, the federal social security act, or to Minnesota or federal public employee retirement funds, and that the amount of taxes imposed on self-employment income under section 1401 of the Internal Revenue Code of 1954, as amended through December 31, 1970, which would have been imposed on the same amount of income if such income had been treated as wages from employment and subject to tax under the provisions of section 3101 of the Internal Revenue Code of 1954, as amended through December 31, 1970.

(9) Expenses, interest and taxes connected with or allocable against the production or receipt of all income not included in the measure of the tax imposed by this act. When the federal income tax liability is joint and several under a joint federal return of husband and wife, the allowable federal income tax paid on the income included in the joint federal return may be taken as a deduction from gross income by the spouse who paid the federal income tax.

(10) In situations where chapter 290 provides for an exclusion from gross income of a specific dollar amount of an item of income assignable to this state, and within the measure of the tax imposed by chapter 290, that portion of the federal income tax paid upon such income excluded, and any expenses attributable to earning such income, shall not be deductible in computing net income.

(11) Amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the commissioner, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable.

[1973 c 279 s 1]

(NOTE: The provisions of this section shall apply to taxable years beginning after December 31, 1972.)

290.16 Depreciation, basis; gain or loss on disposition of property, how taken into account in computing net income

[For text of subds. 1 and 2, see M.S.1971]

Subd. 3. Definitions. As used in this section:

(1) The term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include

(a) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(b) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 290.09, subdivision 7, or amortization allowance provided in section 290.09, subdivision 11, or real property used in the trade or business of the taxpayer, or

(c) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in subparagraph (a);

(2) The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than six months, if and to the extent such gain is taken into account in computing gross income;

(3) The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than six months, if and to the extent such loss is taken into account in computing net income;

(4) The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than six months, if and to the extent such gain is taken into account in computing gross income;

(5) The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than six months, if and to the extent such loss is taken into account in computing net income;

(6) The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year;

(7) The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year;

(8) The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year;

(9) The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(10) The term "net capital gain" means the excess of the gains from the sales or exchanges of capital assets over the losses from such sales or exchanges.

(11) The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the sum allowed under subdivision 5. For the purpose of determining losses under this paragraph, amounts which are short-term capital losses under subdivision 6 shall be excluded.

[1973 c 470 s 1]

(NOTE: The provisions of this subdivision shall apply to taxable years beginning after December 31, 1972.)

[For text of subds. 4 to 16, see M.S.1971]

290.17 Gross income, allocation to state

Items of gross income shall be assigned to this state or other states or countries in accordance with the following principles:

(1) The entire income of all resident or domestic taxpayers from compensation for labor or personal services, or from a business consisting principally of the performance of personal or professional services, shall be assigned to this state, and the income of non-resident taxpayers from such sources shall be assigned to this state if, and to the extent that, the labor or services are performed within it; all other income from such sources shall be treated as income from sources without this state;

(2) Income from the operation of a farm shall be assigned to this state if the farm is located within this state and to other states only if the farm is not located in this state. Income and gains received from tangible property not employed in the business of the recipient of such income or gains, and from tangible property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, shall be assigned to this state if such property has a situs within it, and to other states only if it has no situs in

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this state. Income or gains from intangible personal property not employed in the business of the recipient of such income or gains, and from intangible personal property employed in the business of such recipient if such business consists principally of the holding of such property and the collection of the income and gains therefrom, wherever held, whether in trust, or otherwise, shall be assigned to this state if the recipient thereof is domiciled within this state; income or gains from intangible personal property wherever held, whether in trust or otherwise shall be assigned to this state if the recipient of such income or gains is domiciled within this state, or if the grantor of any trust is domiciled within this state and such income or gains would be taxable to such grantor under sections 290.28 or 290.29;

(3) Income derived from carrying on a trade or business, including in the case of a business owned by natural persons the income imputable to the owner for his services and the use of his property therein, shall be assigned to this state if the trade or business is conducted wholly within this state, and to other states if conducted wholly without this state. This provision shall not apply to business income subject to the provisions of clause (1);

(4) When a trade or business is carried on partly within and partly without this state, the entire income derived from such trade or business, including income from intangible property employed in such business and including, in the case of a business owned by natural persons, the income imputable to the owner for his services and the use of his property therein, shall be governed, except as otherwise provided in sections 290.35 and 290.36, by the provisions of section 290.19, notwithstanding any provisions of this section to the contrary. This shall not apply to business income subject to the provisions of clause (1). For the purposes of this clause, a trade or business located in Minnesota is carried on partly within and partly without this state if tangible personal property is sold by such trade or business and delivered or shipped to a purchaser located outside the state of Minnesota.

In determining whether or not intangible property is employed in a unitary business carried on partly within and partly without this state so that income derived therefrom is subject to apportionment under section 290.19 the following rules and guidelines shall apply.

(a) Intangible property is employed in a business if the business entity owning intangible property holds it as a means of furthering the business operation of which a part is located within the territorial confines of this state.

(b) Where a business operation conducted in Minnesota, is owned by a business entity which carries on business activity outside of the state different in kind from that conducted within this state, and such other business is conducted entirely outside the state, it will be presumed that the two business operations are unitary in nature, interrelated, connected and interdependent unless it can be shown to the contrary.

(5) All other items of gross income shall be assigned to the taxpayer's domicile.

[1973 c 650 art VII s 1]

(NOTE: This section is effective for taxable years beginning after December 31, 1973.)

290.19 Net income; allocation to state, methods

Subdivision 1. Computation, business conducted partly within state; apportionment. The taxable net income from a trade or business carried on partly within and partly without this state shall be computed by deducting from the gross income of such business, wherever derived, deductions of the kind permitted by section 290.09, so far as connected with or allocable against the production or receipt of such income. The remaining net income shall be apportioned to Minnesota as follows:

(1) If the business consists of the mining, producing, smelting, refining, or any combination of these activities of copper and nickel ores, or of the manu

facture of personal property and the sale of said property within and without the state, the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(a) The percentage which the sales made within this state is of the total sales wherever made;

(b) The percentage which the total tangible property, real, personal, and mixed, owned or rented, and used by the taxpayer in this state during the tax period in connection with such trade or business is of the total tangible property, real, personal, or mixed, wherever located, owned or rented and, used by the taxpayer in connection with such trade or business during the tax period; and,

(c) The percentage which the taxpayer's total pay-rolls paid or incurred in this state or paid in respect to labor performed in this state in connection with such trade or business is of the taxpayer's total pay-rolls paid or incurred in connection with such entire trade or business;

(d) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage determined under clause (1)(a), 15 percent of the percentage determined under clause (1)(b), and 15 percent of the percentage determined under clause (1)(c);

(2)(a) In all other cases the remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(1) The percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted;

(2) The percentage which the total tangible property, real, personal, and mixed, owned or rented, and used by the taxpayer in this state during the tax period in connection with such trade or business is of the total tangible property, real, personal, or mixed, wherever located, owned, or rented, and used by the taxpayer in connection with such trade or business during the tax period; and

(3) The percentage which the taxpayer's total pay-rolls paid or incurred in this state or paid in respect to labor performed in this state in connection with such trade or business is of the taxpayer's total pay-rolls paid or incurred in connection with such entire trade or business;

(4) The percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 percent of the percentage determined under clause (2)(a)(1), 15 percent of the percentage determined under clause (2)(a)(2), and 15 percent of the percentage determined under clause (2)(a)(3);

(b) If the methods prescribed under clause (2)(a) will not properly reflect taxable net income assignable to the state, there may be used, if practicable and if such use will properly and fairly reflect such income, the percentage which the sales, gross earnings, or receipts from business operations, in whole or in part, within this state bear to the total sales, gross earnings, or receipts from business operations wherever conducted; or the separate or segregated accounting method;

(3) The sales, pay-rolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or used by the taxpayer during the taxable year in respect of which the tax is being computed.

[1973 c 650 art VII s 2]

(NOTE: This section is effective for taxable years beginning after December 31, 1973.)

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Subd. 1a. Determination of sales made within this state. For purposes of this section the following rules shall apply in determining whether or not sales are made within this state.

Sales of tangible personal property are made within this state if the property is delivered or shipped to a purchaser within this state, and the taxpayer is taxable in this state, regardless of the f. o. b. point or other conditions of the sale.

Sales made by or through a corporation which is qualified as a domestic international sales corporation under section 992 of the Internal Revenue Code of 1954, as amended through December 31, 1972, shall not be considered to have been made within this state.

(NOTE: This subdivision is effective for taxable years beginning after December 31, 1973.)

[1973 c 650 art VII s 3]

[For text of subds. 2 and 3, see M.S.1971]

290.23 Estates and trusts; computation of net income, credits; deductions

[For text of subds. 1 to 10, see M.S.1971]

Subd. 11. Definitions applicable to subdivisions 11 to 14. For purposes of subdivisions 11 to 14

(1) The term "undistributed net income" for any taxable year means the amount by which distributable net income of the trust for such taxable year exceeds the sum of

(a) the amounts for such taxable year specified in subdivision 8(1)(a) and (b); and

(b) the amount of taxes imposed on the trust.

(2) The term "accumulation distribution" for any taxable year of the trust means the amount (if in excess of \$2,000) by which the amounts specified in subdivision 8(1)(b) for such taxable year exceed distributable net income reduced by the amounts specified in subdivision 8(1)(a). For purposes of this paragraph, the amount specified in subdivision 8(1)(b) shall be determined without regard to subdivision 12 and shall not include

(a) amounts paid, credited, or required to be distributed to a beneficiary as income accumulated before the birth of such beneficiary or before such beneficiary attains the age of 18;

(b) amounts properly paid or credited to a beneficiary to meet the emergency needs of such beneficiary;

(c) amounts properly paid or credited to a beneficiary upon such beneficiary's attaining a specified age or ages if (1) the total number of such distributions cannot exceed 4 with respect to such beneficiary, (2) the period between each such distribution to such beneficiary is 4 years or more, and (3) as of January 1, 1956, such distributions are required by the specific terms of the governing instrument; and

(d) amounts properly paid or credited to a beneficiary as a final distribution of the trust if such final distribution is made more than 9 years after the date of the last transfer to such trust.

(3) The term "taxes imposed on the trust" means the amount of the taxes which are imposed for any taxable year on the trust under this chapter (without regard to subdivisions 11 to 14) and which, under regulations prescribed by the commissioner, are properly allocable to the undistributed portion of the distributable net income. The amount determined in the preceding sentence shall be reduced by any amount of such taxes allowed, under subdivisions 13 and 14, as a credit to any beneficiary on account of any accumulation distribution determined for any taxable year.

(4) The term "preceding taxable year" does not include any taxable year of the trust to which sections 290.22 to 290.28 do not apply. In the case of a preceding taxable year with respect to which a trust qualifies (without re-

gard to subdivisions 11 to 14) under the provisions of subdivisions 6 and 7, for purposes of the application of subdivisions 11 to 14 to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the commissioner, be treated as a trust to which subdivisions 8, 9 and 10 apply.

[1973 c 725 s 52]

[For text of subds. 12 to 14, see M.S.1971]

290.25 Trusts; grantor treated as substantial owner

[For text of subds. 1 to 3, see M.S.1971]

Subd. 4. Power to control beneficial enjoyment. (1) The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(2) Paragraph (1) shall not apply to the following powers regardless of by whom held:

(a) A power described in section 290.28, subdivision 1(2) to the extent that the grantor would not be subject to tax under that section.

(b) A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that a grantor would not be treated as the owner under subdivision 3 if the power were a reversionary interest; but the grantor may be treated as the owner after the expiration of the period unless the power is relinquished.

(c) A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(d) A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 290.21, subdivision 3, (relating to charitable contributions).

(e) A power to distribute corpus either (1) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this subparagraph (e) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(f) A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable (1) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or (2) on termination of the trust, or in conjunction with a distribution of corpus which augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or

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more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this subparagraph (f) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(g) A power exercisable only during (1) the existence of a legal disability of any current income beneficiary, or (2) the period during which any income beneficiary shall be under the age of 18 years, to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this subparagraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(h) A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(3) Paragraph (1) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor

(a) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or

(b) to pay out of corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this paragraph (3) if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(4) Paragraph (1) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (2)(f) or (g) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

[1973 c 725 s 53]

[For text of subd. 5, see M.S.1971]

290.361 National and state banks; imposition of excise tax, computation, surtax

[For text of subd. 1, see M.S.1971]

Subd. 2. Computation of taxable net income. The taxable net income shall be computed in the manner provided by this chapter except that in the case of national and state banks: (a) the rate shall be 13.64 percent until January 1, 1974 and 12 percent thereafter; (b) the basic date for the purpose of computing gain or loss and depreciation shall be January 1, 1940, instead of January 1, 1933; (c) property consisting of investments in bonds, stocks, notes, debentures, mortgages, certificates, or any evidence of indebtedness, and any property acquired in liquidation thereof when such property is held for investment or for sale, shall not be deemed to be capital assets; and (d) in computing net income there shall be allowable as a deduction from gross income, in addition to deductions otherwise provided for in this act, any dividend (not including any distribution in liquidation) paid, within the taxable

year, to the United States or to any instrumentality thereof exempt from federal income taxes, on the preferred stock of the bank owned by the United States or such instrumentality.

[1973 c 650 art XXV s 1]

(NOTE: The provisions of this subdivision shall be effective on July 1, 1973.)

[For text of subd. 3, see M.S.1971]

Subd. 4. Disposition of tax. The revenues derived from the excise tax on banks shall be paid into the state treasury and credited to the general fund, from which shall be paid all refunds of taxes erroneously collected from banks as certified by the commissioner.

There is hereby appropriated to the persons or banks entitled to such refunds, from the general fund, an amount sufficient to make the refunds.

[1973 c 650 art VIII s 1]

(NOTE: After November 30, 1973 no adjustments shall be made to the November 30, 1973 distributions or prior distributions required to be made to the several county auditors pursuant to section 290.361, subdivision 4. Any amounts appropriated for this purpose

shall lapse after November 30, 1973 and shall revert to the general fund.

The provisions of this subdivision shall be effective for all payments required to be made after November 30, 1973.)

[For text of subs. 5 to 7, see M.S.1971]

290.37 Filing requirements for individuals

Subdivision 1. Persons making returns. The following persons shall make a return for each taxable year, or fractional part thereof where permitted or required by law:

(a) A single individual with respect to his own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specified credits allowed, or if his gross income exceeds \$1,000.

(b) A married individual if his own taxable net income or the combined taxable net income of himself and his spouse exceeds an amount on which a tax at the rates herein provided would exceed the specified credits allowed, or if his gross income or the combined gross income of himself and his spouse exceeds \$1,800.

(c) An unmarried individual who has attained the age of 65 before the close of the taxable year with respect to his own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specified credits allowed or if his gross income exceeds \$1,800.

(d) A married individual living with husband or wife where one has attained the age of 65 before the close of the individual's taxable year if his own taxable net income or the combined taxable net income of himself and his spouse exceeds an amount on which a tax at the rates herein provided would exceed the specified credits allowed or if his gross income or the combined gross income of himself and his spouse exceeds \$2,400.

(e) A married individual living with husband or wife and both spouse have attained the age of 65 if his own taxable net income or the combined taxable net income of himself and his spouse exceeds an amount on which a tax at the rates herein provided would exceed the specified credits allowed or if his gross income or the combined gross income of himself and his spouse exceeds \$2,800.

(f) An unmarried individual who is blind at the close of the taxable year with respect to his own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specified credits allowed or if his gross income exceeds \$1,800; or \$2,400 if the individual has also attained the age of 65 before the close of the taxable year.

(g) A married individual living with husband or wife and one is blind at the close of the taxable year with respect to his own taxable net income or the combined taxable net income of himself and his spouse exceeds an amount

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on which a tax at the rates herein provided would exceed the specified credits allowed or if his gross income or the combined gross income of himself and his spouse exceeds \$2,400; or \$2,800 if one has attained the age of 65 before the close of the taxable year and \$3,300 if both have attained the age of 65 before the close of the taxable year.

(h) A married individual living with husband or wife where both are blind at the close of the taxable year with respect to his own taxable net income or the combined taxable net income of himself and his spouse exceeds an amount on which a tax at the rates herein provided would exceed the specified credits allowed or if his gross income or the combined gross income of himself and his spouse exceeds \$2,900; or \$3,300 if one has attained the age of 65 before the close of the taxable year and \$3,600 if both have also attained the age of 65 before the close of the taxable year.

(i) The executor or administrator of the estate of a decedent with respect to the taxable net income of such decedent for that part of the taxable year during which he was alive if such taxable net income exceeds an amount on which a tax at the rates herein provided would exceed the specific credits allowed, or if such decedent's gross income for the aforesaid period exceeds \$750.

(j) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credits allowed, or if such estate's gross income exceeds \$750.

(k) The trustee or other fiduciary of property held in trust with respect to the taxable net income of such trust if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credits allowed, or if the gross income of such trust exceeds \$750, if in either case such trust belongs to the class of taxable persons.

(l) The guardian of an infant or other incompetent person with respect to such infant's or other person's taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credits allowed, or if the gross income of such infant or other incompetent person exceeds \$1,000.

(m) Every corporation with respect to its taxable net income if in excess of \$500, or if its gross income exceeds \$5,000. The return in this case shall be signed by an officer of the corporation.

(n) The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer with respect to the taxable net income of such taxpayer if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credits allowed (or, if the taxpayer is a corporation, if the taxable net income exceeds \$500), or if such taxpayer's gross income exceeds \$5,000.

Such return shall (a) be verified or contain a written declaration that it is made under the penalties of criminal liability for wilfully making a false return, and (b) shall contain a confession of judgment for the amount of the tax shown due thereon to the extent not timely paid.

For purposes of (a) through (n) the term "gross income" shall mean gross income as defined in section 61 of the Internal Revenue Code of 1954, as amended through December 31, 1970, modified and adjusted in accordance with the provisions of sections 290.08, 290.17 and 290.65.

[1973 c 55 s 1]

(NOTE: The provisions of this section shall be effective for taxable years beginning after December 31, 1972.)

[For text of subds. 2 and 3, see M.S.1971]

290.49 Time limit on assessment, collection*[For text of subd. 1, see M.S.1971]*

Subd. 2. Assessment, court proceedings; income in respect of decedent, income to trustee, fiduciary, corporation. In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by a corporation, the tax shall be assessed within 18 months, and any proceeding in court for the collection of such tax shall be begun within two years after written request for such assessment (filed after the return is made and in such form as the commissioner may prescribe) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the trustee of a terminating trust or other fiduciary who, because of custody of assets, would be liable for the payment of tax under section 290.54, or by the corporation, but except as provided in subdivision 8, no assessment shall be made after the expiration of three and one half years after the return was filed, and no action shall be brought after the expiration of four years after the return was filed.

This subdivision shall not apply in the case of a corporation unless

- (1) such written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of such 18-months period; and
- (2) the dissolution is in good faith begun before the expiration of such 18-months period; and
- (3) the dissolution is completed.

*[1973 c 21 s 1]**[For text of subds. 3 to 10, see M.S. 1971]***290.50 Overpayments, claims for refund**

Subdivision 1. Procedure, time limit. (a) A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in section 290.48, subdivisions 1 and 5) an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for a refund of such excess. Except as provided in subdivision 4 no such claim shall be entertained unless filed within two years after such tax was paid or collected, or within three and one-half years from the filing of the return, whichever period is the longer, or if no return was filed by the taxpayer, within two years from the time the tax was paid. If the claim relates to an overpayment on account of failure to deduct a loss due to a bad debt or to a security becoming worthless, the period shall be seven years from the date the return was filed, and in such case the refund shall be limited to the amount of such overpayment.

(b) If the claim was filed by the taxpayer during the three and one-half year period following the filing of the return, timely filed in accordance with the provisions of section 290.42, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three and one-half years plus the period of any extension of time for filing a return.

(c) If the claim was not filed within three and one-half years after the filing of the return, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim.

(d) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under (a) or (b), as the case may be, if the claim was filed on the date the credit or refund is allowed.

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(e) Notwithstanding any provisions of this subdivision to the contrary as the credit or overpayment relates to taxes collected by methods other than those provided in section 290.48, subdivisions 1 and 5 for any taxable year ending on or before December 31, 1968, the claim may be entertained if filed on or before April 15, 1970.

(f) For purposes of this subdivision, the prepayment of tax made through the withholding of tax at the source, or payment of estimated tax, prior to the due date of the tax are considered as having been paid on the last day prescribed by law for the payment of the tax by the taxpayer.

(g) Upon the filing of a claim the commissioner shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof to the taxpayer at the address stated upon the return. If such claim is allowed in whole or in part, the commissioner shall issue his certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of six percent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, however, where the only basis for refund is the carry-back of a net operating loss or the carry-back of a pollution control credit or both interest shall be computed from the end of the taxable year in which the net operating loss occurs or pollution control credit arises to the date the refund is paid, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this act, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose.

[1973 c 20 s 1]

[For text of subds. 2 to 5, see M.S.1971]

290.53 Penalties, interest

[For text of subds. 1 and 2, see M.S.1971]

Subd. 3. Failure to file, filing false or fraudulent return; intent to evade tax; 50 percent penalty. If any person, with intent to evade the tax imposed by this act, shall fail to file any return required by this act, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to 50 percent of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties, civil and criminal, provided by this section. This amount shall be in lieu of any amount determined under subdivision 3a.

[1973 c 77 s 1]

(NOTE: The provisions of this subdivision shall be applicable to the taxable years beginning after December 31, 1972.)

Subd. 3a. Intentional disregard of rules and regulations. If any part of any additional assessment, as determined under section 290.46, is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to five percent of such additional assessment.

[1973 c 77 s 2]

(NOTE: The provisions of this subdivision shall be applicable to the taxable years beginning after December 31, 1972.)

[For text of subds. 4 to 6, see M.S.1971]

290.611 Disclosure of contents of tax returns prohibited in certain instances; penalty

Subdivision 1. No person who prepares, aids in the preparation, processes, consults with respect to or reviews a state or federal tax return for another person, corporation, partnership, association or other taxpayer shall divulge any particulars of such return, except to authorized employees of the de-

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partment of taxation or of the Internal Revenue Service in the course of an examination, without the written permission of such person, corporation, partnership, association or other taxpayer or the legally appointed representative of such taxpayer if such taxpayer is deceased, incompetent or otherwise unable to give such consent. The provisions of this subdivision shall not apply to disclosure by an employee of the department of taxation or of the Internal Revenue Service to other employees of such department or service where such disclosure is necessary for the effective administration of the tax laws of the state or the federal government.

Subd. 2. The provisions of this section shall not prohibit the furnishing of information by any tax return preparer to a tax return processor for the purpose of obtaining computer services in the preparation of the return.

Subd. 3. The provisions of this section shall not prohibit the furnishing of information by an owner or employee of a business firm to any other owner or employee of the same business firm, whether or not such other person became an owner or employee after such information was received.

Subd. 4. This section shall not be construed to limit the disclosure of tax returns, records, or information to the purchaser, and his employees, in the event of the sale of a business where such business includes the preparation of state or federal income tax returns.

Subd. 5. Any person disclosing any particulars of any tax return, without the written consent of the taxpayer making such return, in violation of the provisions of this section, is guilty of a gross misdemeanor.

[1973 c 66 s 1]

290.92 Tax withheld at source upon wages.

[For text of subs. 1 to 2b, see M.S.1971]

Subd. 3. Withholding, irregular period. If payment of wages is made to an employee by an employer

(a) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employees by such employer, or

(b) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(c) With respect to a period beginning in one and ending in another calendar year, or

(d) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of or pays, the wages payable by another employer to such employee.

The manner of withholding and the amount to be deducted and withheld under subdivision 2a shall be determined in accordance with regulations prescribed by the commissioner under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

[1973 c 501 s 4]

[For text of subs. 4, 4a and 5, see M.S.1971]

Subd. 6. Employer to furnish information. (1) Every employer required to deduct and withhold tax under subdivision 2a or subdivision 3 shall file with the commissioner of taxation, and pay over the tax required to be withheld under subdivision 2a and subdivision 3 for each quarterly period, on or before the last day of the month following the close of each quarterly period and make and file with the commissioner a return and pay over to him the tax required to be withheld under subdivision 2a or subdivision 3, except that, if during any calendar month, other than the last month of the calendar quar-

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ter, the aggregate amount of the tax withheld under subdivision 2a or subdivision 3 exceeds \$100, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with the commissioner of taxation. However, any such return may be filed on or before the tenth day of the second calendar month following such period if such return shows timely deposits in full payment of such taxes due for such period. For the purpose of the preceding sentence, a deposit which is not required to be made within such return period, may be made on or before the last day of the first calendar month following the close of such period. Every employer, in preparing said quarterly return, shall take credit for monthly deposits previously made in accordance with this subdivision.

Such return shall be in such form and contain such information as the commissioner may prescribe. The commissioner may grant a reasonable extension of time for making such return or deposit and paying such tax, but no such extension shall be granted for more than six months.

(2) If less than the correct amount of such tax is paid to the commissioner, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the commissioner may prescribe. If such underpayment cannot be so adjusted the amount of the underpayment shall be assessed and collected in such manner and at such times as the commissioner may prescribe.

(3) If any employer fails to make and file any return required by paragraph (1) at the time prescribed therefor, or makes and files a false or fraudulent return, the commissioner shall make for him a return from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a tax on the basis thereof. The amount of tax shown thereon shall be paid to the commissioner at such times as the commissioner may prescribe. Any such return or assessment so made by the commissioner shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

(4) If the commissioner, in any case, has reason to believe that the collection of the tax provided for in paragraph (1) of this subdivision, and any added penalties and interest, if any, will be jeopardized by delay, he may immediately assess such tax, whether or not the time otherwise prescribed by law for making and filing the return and paying such tax has expired.

(5) Any assessment under this subdivision shall be made by recording the liability of the employer in the office of the commissioner in accordance with regulations prescribed by the commissioner. Upon request of the employer, the commissioner shall furnish the employer a copy of the record of assessment.

(6) Any assessment of tax under this subdivision shall be made within three and one-half years after the due date of the return required by paragraph (1), or the date the return was filed, whichever is later; except that in the case of a false or fraudulent return or failure to file a return, the tax may be assessed at any time.

(7)(a) Except as provided in (b) of this paragraph, every employer who fails to pay to or deposit with the commissioner any sum or sums required by this section to be deducted, withheld and paid, shall be personally and individually liable to the state of Minnesota for such sum or sums (and any added penalties and interest); and any sum or sums deducted and withheld in accordance with the provisions of subdivision 2a or subdivision 3 shall be held to be a special fund in trust for the state of Minnesota.

(b) If the employer, in violation of the provision of this section, fails to deduct and withhold the tax under this section, and thereafter the taxes against which such tax may be credited are paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this

shall in no case relieve the employer from liability for any penalties and interest otherwise applicable in respect of such failure to deduct and withhold.

(8) Upon the failure of any employer to pay to or deposit with the commissioner within the time provided by paragraphs (1), (2) or (3) of this subdivision any tax required to be withheld in accordance with the provisions of subdivision 2a or subdivision 3, or if the commissioner has assessed a tax pursuant to paragraph (4), such tax shall become immediately due and payable, and the commissioner may deliver to the attorney general a certified statement of the tax, penalties and interest due from such employer. The statement shall also give the address of the employer owing such tax, the period for which the tax is due, the date of the delinquency, and such other information as may be required by the attorney general. It shall be the duty of the attorney general to institute legal action in the name of the state to recover the amount of such tax, penalties, interest and costs. The commissioner's certified statement to the attorney general shall for all purposes and in all courts be prima facie evidence of the facts therein stated and that the amount shown therein is due from the employer named in the statement. In event action is instituted as herein provided, the court shall, upon application of the attorney general, appoint a receiver of the property and business of the delinquent employer for the purpose of impounding the same as security for any judgment which has been or may be recovered. Any such action shall be brought within four years and three months after the due date of the return or deposit required by paragraph (1), or the date the return was filed, or deposit made whichever is later; except that in the case of failure to make and file such return or if such return is false or fraudulent, or such deposit is not made such action may be brought at any time.

(9) The tax required to be withheld under subdivision 2a or subdivision 3 or paid to, or deposited with the commissioner under subdivision 6, together with penalties, interest and costs, shall become a lien upon all of the real property of the employer within this state, except his homestead, from and after the filing by the commissioner of a notice of such lien in the offices of the register of deeds of the county in which such real property is situated.

(10) Either party to an action for the recovery of any tax, interest or penalties under this subdivision may remove the judgment to the supreme court by appeal, as provided for appeals in civil cases.

(11) No suit shall lie to enjoin the assessment or collection of any tax imposed by this section, or the interest and penalties added thereto.

(12) When any tax is due and payable as provided in paragraph (8) the commissioner may issue his warrant to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the employer and to levy upon the rights to property of the employer within the county and to return such warrant to the commissioner and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the employer and to levy upon the rights to property of the employer within his county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of Minnesota Statutes 1961, Section 550.37, and acts amendatory thereof, and shall sell so much thereof as is required to satisfy such taxes, interest, and penalties, together with his costs; but such sales shall, as to their manner, be governed by the laws applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of such sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain such part thereof as is required to satisfy the tax, interest, penalties and costs, and pay over any balance to the taxpayer. Any action taken by the commissioner pursuant to this subdivision

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shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy providing for the collection of taxes required to be withheld by employers.

[1973 c 73 s 1; 1973 c 501 s 5]

Subd. 7. Withholding statement to employee and to commissioner. (1) Every person required to deduct and withhold from an employee a tax under subdivision 2a or subdivision 3, or who would have been required to deduct and withhold a tax under subdivision 2a or subdivision 3, determined without regard to subdivision 19, if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect to the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

- (a) Name of such person,
- (b) The name of the employee and his social security account number,
- (c) The total amount of wages as that term is defined in subdivision 1(1),
- (d) The total amount deducted and withheld as tax under subdivision 2a or subdivision 3.

(2) The statement required to be furnished by this subdivision in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the commissioner may prescribe.

(3) The commissioner may prescribe regulations providing for reasonable extensions of time, not in excess of 30 days, to employers required to furnish such statements to their employees under this subdivision.

(4) A duplicate of any statement made pursuant to this subdivision and in accordance with regulations prescribed by the commissioner shall be filed with the commissioner at such time as he may by regulations prescribe. Such duplicate when so filed shall constitute the information return required to be made in respect of wages, salaries and commissions under section 290.41, subdivision 2.

[1973 c 73 s 2; 1973 s 501 s 6]

Subd. 8. Employer liable for tax withheld. The employer shall be liable for the payment of the tax required to be deducted and withheld under subdivision 2a or subdivision 3, and shall not be liable to any person for the amount of any such payment.

[1973 c 73 s 3; 1973 c 501 s 7]

Subd. 9. Determination of tax due. The commissioner may grant permission to employers, who do not desire to use the withholding tax tables provided in accordance with paragraph (3) of subdivision 2a, to determine the amount of tax to be withheld by use of a method of withholding other than withholding tax tables, provided such method will withhold from each employee substantially the same amount of tax as would be withheld by use of the withholding tax tables. Employers who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the commissioner before the beginning of a payroll period for which the employer desires to withhold the tax by such other method. Applications to use such other method must be accompanied by evidence establishing the need for the use of such method.

[For text of subd. 10, see M.S.1971]

[1973 c 73 s 4; 1973 c 501 s 8]

Subd. 11. Refunds. Where there has been an overpayment of tax imposed by this section, refund of such overpayment or credit shall be made to the employer in accordance with regulations prescribed by the commissioner, but only to the extent that the amount of such overpayment was not deducted

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and withheld under subdivision 2a or subdivision 3 by the employer. Any overpayment which is refunded shall bear interest at the rate of six percent per annum, computed from the date of payment until the date the refund is paid to the employer. The state auditor shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62 and so much of said fund as may be necessary is hereby appropriated for that purpose. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

[1973 c 73 s 5; 1973 c 501 s 9]

Subd. 12. Withheld amount, credit against tax. The amount deducted and withheld as tax under subdivision 2a or subdivision 3 during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the taxes imposed by chapter 290, for a taxable year beginning in such calendar year. If more than one taxable year begins in such calendar year, such amount shall be allowed as a credit against the taxes for the last taxable year so beginning.

[1973 c 73 s 6; 1973 c 501 s 10]

Subd. 13. Refunds. (1) Where the amount of the tax withheld at the source under subdivision 2a or subdivision 3 exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the employee taxpayer or imposed upon him by chapter 290, the amount of such excess shall be refunded to the employee taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be required to refund in accordance with the provisions of Extra Session Laws 1959, Chapter 57, Section 13. Where any amount of such excess to be refunded exceeds \$10, such amount shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the employee taxpayer or (b) the date on which his return is filed, whichever is later, to the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the employee taxpayer within the purview of section 290.46.

(3) The state auditor shall cause any such refund of tax and interest, to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[1973 c 73 s 7; 1973 c 501 s 11]

[For text of subd. 14, see M.S.1971]

Subd. 15. Penalties. (1) If any tax required to be deducted and withheld under subdivision 2a or subdivision 3, or any portion thereof, is not paid to or deposited with the commissioner within the time specified in subdivision 6 for the payment thereof, there shall be added thereto a penalty equal to five percent of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty, shall bear interest at the rate of six percent per annum from the time such tax should have been paid or deposited until paid. Where an extension of time for payment has been granted under the provisions of subdivision 6, interest shall be paid at the rate of six percent per annum from the date when such payment or deposit should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this subdivision shall apply.

(2) In the case of any failure to withhold a tax on wages, make and file quarterly returns or make payments to or deposits with the commissioner of

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amounts withheld, as required by this section, within the time prescribed by law, unless it is shown that such failure is not due to wilful neglect, there shall be added to the tax in lieu of the five percent penalty provided in paragraph (1) a penalty equal to 25 percent of the amount of tax that should have been properly withheld and paid over to or deposited with the commissioner. The amount so added to the tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

(3) If any employer required to withhold a tax on wages, make deposits, make and file quarterly returns and make payments to the commissioner of amounts withheld, as required by sections 290.92 to 290.97, wilfully fails to withhold such a tax or make such deposits, files a false or fraudulent return, wilfully fails to make such a payment or deposit, or wilfully attempts in any manner to evade or defeat any such tax or the payment or deposit thereof, there shall also be imposed on such employer as a penalty an amount equal to 50 percent of the amount of tax (less any amount paid or deposited by such employer on the basis of such false or fraudulent return or deposit) that should have been properly withheld and paid over or deposited with the commissioner. The penalty imposed by this paragraph shall be collected as a part of the tax, and shall be in addition to any other penalties civil and criminal, prescribed by this subdivision.

(4) If any person required under the provisions of subdivision 7 to furnish a statement to an employee and a duplicate statement to the commissioner, wilfully furnishes a false or fraudulent statement to an employee or a false or fraudulent duplicate statement to the commissioner, or wilfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or regulations prescribed by the commissioner thereunder, there shall be imposed on such a person a penalty of \$10 for each such act or failure to act. The penalty imposed by this paragraph shall become due and payable within ten days after the mailing of a written demand therefor, and may be collected in the manner prescribed in subdivision 6(8).

(5) In addition to the penalties hereinbefore prescribed, any person required to withhold a tax on wages, make and file quarterly returns and make payments or deposits to the commissioner of amounts withheld, as required by this section, who wilfully fails to withhold such a tax or truthfully make and file such a quarterly return or make such a payment or deposit, shall be guilty of a gross misdemeanor.

(6) In lieu of any other penalty provided by law, except the penalty provided by paragraph (4), any person required under the provisions of subdivision 7 to furnish a statement to an employee and a duplicate statement to the commissioner, who wilfully furnishes a false or fraudulent statement to an employee or a false or fraudulent duplicate statement to the commissioner, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required by the provisions of subdivision 7, or regulations prescribed by the commissioner thereunder, shall be guilty of a gross misdemeanor.

(7) Any employee required to supply information to his employer under the provisions of subdivision 5, who wilfully fails to supply information thereunder which would require an increase in the tax to be deducted and withheld under subdivision 2a or subdivision 3, shall be guilty of a misdemeanor.

(8) The term "person," as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(9) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

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(10) The commissioner shall have power to abate any civil penalties prescribed in this subdivision when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general if the abatement exceeds \$500.

[1973 c 73 s 8; 1973 c 501 s 12]

[For text of subds. 16 to 21, see M.S.1971]

290.921 Payment of tax

Subdivision 1. The tax imposed by section 290.031 shall be remitted to the commissioner of taxation, (together with all returns and reports required hereunder) by any employer who has paid or is expected to pay taxable compensation, at the time and in the manner provided for payments of withholding tax by employers to the commissioner under section 290.92, subdivision 6.

Subd. 2. The provisions of section 290.92 and all rules and regulations promulgated by the commissioner in respect thereto shall be applicable to the tax imposed by sections 290.031, 290.921, and 290.922 where applicable.

[1973 c 650 art XXVI s 2]

290.922 Refund and appropriation

Any overpayment of the tax required to be paid by section 290.031 by reason of reduction in the mill rate or for any other reason, shall be refunded by the commissioner. There is appropriated to the commissioner the amount necessary to make such refundment.

[1973 c 650 art XXVI s 3]

290.93 Declaration of estimated tax

Subdivision 1. Requirement of declaration. (1) Every individual shall, at the time prescribed in subdivision 5 of this section, make and file with the commissioner a declaration of his estimated tax for the taxable year if

(a) The gross income (as defined in Minnesota Statutes, Section 290.01, Subdivision 20) for the taxable year can reasonably be expected to exceed the gross income amounts set forth in section 290.37, subdivision 1 pertaining to the requirements for making a return; and

(b) Such gross income can reasonably be expected to include more than \$500 from sources other than wages upon which a tax has been deducted and withheld under section 290.92, subdivision 2a or subdivision 3.

(2) If the individual is an infant or incompetent person, the declaration shall be made by his guardian.

(3) Notwithstanding the provisions of this section, no declaration is required if the estimated tax (as defined in subdivision 3) can reasonably be expected to be less than \$50.

[1973 c 273 s 1]

(NOTE: The provisions of this subdivision shall be applicable to the taxable years beginning after December 31, 1973).

[For text of subd. 2, see M.S.1971]

Subd. 3. Estimated tax defined. For purposes of this section, in the case of an individual, the term "estimated tax" means the amount which the individual estimates as the sum of the taxes imposed by chapter 290, for the taxable year, minus the amount which the individual estimates as his allowable credits against income tax under chapter 290.

[1973 c 19 s 1]

(NOTE: The provisions of this subdivision shall be effective for taxable years beginning after December 31, 1972.)

Subd. 4. Commissioner to prescribe declaration. The declaration shall be in such form and shall contain such information as the commissioner may prescribe.

[1973 c 273 s 2]

(NOTE: The provisions of this subdivision shall be applicable to the taxable years beginning after December 31, 1973.)

[For text of subds. 5 to 8, see M.S.1971]

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Subd. 9. Overpayment of estimated tax. (1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments plus (a) the total amount of tax withheld at the source under section 290.92, subdivision 2a or subdivision 3 (if any) and (b) and other payments (if any) exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by chapter 290, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than \$1 the commissioner shall not be required to refund in accordance with the provisions of Extra Session Laws 1959, Chapter 57, Section 13. Where any amount of such excess to be refunded exceeds \$10, such amount shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The state auditor shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of section 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[1973 c 43 s 1]

[For text of subs. 10 to 12, see M.S.1971]

290.936 Overpayment of estimated tax

(1) Where the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of such installment payment, the overpayment shall be credited against the unpaid installments, if any. Where the total amount of the estimated tax payments and other payments, if any, exceeds by \$1 or more the taxes (and any added penalties and interest) reported in the return of the taxpayer or imposed upon him by chapter 290, the amount of such excess shall be refunded to the taxpayer. If the amount of such excess is less than \$1, the commissioner shall not be required to refund. Where any amount of such excess to be refunded exceeds \$10, such amount shall bear interest at the rate of six percent per annum, computed from 90 days after (a) the due date of the return of the taxpayer or (b) the date on which his return is filed, whichever is later, until the date the refund is paid to the taxpayer. Notwithstanding the provisions of section 290.50, written findings by the commissioner, notice by mail to the taxpayer, and certificate for refundment by the commissioner, shall not be necessary. The provisions of section 270.10, shall not be applicable.

(2) Any action of the commissioner in refunding the amount of such excess shall not constitute a determination of the correctness of the return of the taxpayer within the purview of section 290.46.

(3) The state auditor shall cause any such refund of tax and interest to be paid out of the general fund in accordance with the provisions of sections 290.361 and 290.62, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[1973 c 43 s 2]

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290.982 Claimant

Claimant means a person who has filed a claim under sections 290.981 to 290.992, who was domiciled in this state during the entire calendar year preceding the year in which he files claim for relief, who resided in a rented or leased unit on which ad valorem taxes are accrued, for not less than six months of the calendar year covered by the claim. When a unit is occupied by two or more individuals and more than one such individual is able to qualify as a claimant, such individuals may determine between them as to who the claimant shall be, and all amounts paid for the unit during the selected claimant's occupancy shall be considered as paid by him. If they are unable to agree, the matter shall be referred to the commissioner of taxation and his decision shall be final.

[1973 c 650 art IX s 1]

(NOTE: The provisions of this section shall be effective for all years beginning after December 31, 1972.)

290.983 Amount of credit; offset against tax

Subdivision 1. The credit allowed by section 290.981 shall be 10 percent of the total amount paid by the claimant during the taxable year as rent for the occupancy of real property used as the place of residence of his household. The credit shall not exceed \$120 in any taxable year. For purposes of sections 290.981 to 290.992 "rent" does not include payments attributable to heat, light, or other utilities.

[1973 c 650 art IX s 2]

(NOTE: The provisions of this subdivision shall be effective for all years beginning after December 31, 1972.)

Subd. 2. The commissioner of taxation, within the applicable period of limitations, may offset the amount of the credit provided by sections 290.981 to 290.992 against any liability for income tax on the part of the individual claiming the credit and shall pay the balance due, if any, to such individual. Interest shall be allowed as provided in section 290.92, subdivision 13. All payments pursuant to sections 290.981 to 290.992 shall be from the general fund.

[1973 c 44 s 2]

(NOTE: This subdivision is in effect for the taxable years beginning after December 31, 1972.)

290.99 No relief allowed in certain cases

No claim for relief under sections 290.981 to 290.992 shall be allowed to any person who is a recipient of public funds for the payment of rent during the period for which the claim is filed.

[1973 c 650 art IX s 3]

(NOTE: The provisions of this section shall be effective for all years beginning after December 31, 1972.)

CHAPTER 291. INHERITANCES, DEVISES, BEQUESTS

Sec.		Sec.	
291.005	Definitions.	291.09	Determination of tax.
291.03	Rates.	291.18	Overpayment of tax; refunds;
291.05	Exemptions.		appropriation.
291.08	Nonresident estates; allowance of deductions and exemptions.	291.33	Payments to counties.

291.005 Definitions

Unless the context otherwise clearly requires, the following terms used in this chapter shall have the following meanings:

(1) "Representative" means and includes all executors of the will of a decedent and all administrators of any description, whether general or special, of